

Monitoring and enforcement of short-term rentals rules. Mission impossible?

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Abstract: Short-term rental platforms, especially Airbnb, represent a deep change in the housing sector. In Portugal, the first attempts at designing regulatory measures to balance short-term rental are far from achieving high levels of compliance. As in other European cities, the monitoring and enforcement of rules drawn up so far entail difficulties for most of the management entities. This paper aims to discuss the relationship between the type of rules designed for short-term rentals, and the enforcement effort required from public entities. The methodology relies on a brief analysis of the rules implemented in different European cities through available literature, and a detailed assessment on the evolution on the Portuguese case, evaluating the expectations on the level of compliance with short-term planning rules. To access enforcement effort, we propose a systematization of the type of rules in place in the main European cities. In countries with traditionally low levels of compliance and reduced enforcement results (such as Portugal), reducing the enforcement effort seems the 'smart' thing to do. We conclude that monitoring and enforcement of short-term rental rules is not a 'mission impossible' but it is certainly a demanding one.

Keywords: Airbnb; Short-term rental; Housing; Tourism; Illegal development

Introduction

Online platforms have a growing impact on society and urban life, allowing easy connection between people and offering the most varied types of services. The so-called "sharing economy" (for un- or underutilised assets), of which Uber and Airbnb platforms became icons, definitively changed the traditional forms of transport, accommodation, tourism and, consequently, the way to inhabit cities. This growth of the sharing economy or "economy of trust" is faced by many economists as a new economic paradigm and is expected to change substantially the service sector (Dudás, Vida, Kovalcsik, & Boros, 2017). The short-term rental sector has grown exponentially in recent years leveraged by Web applications that offer accommodation all over the world at a one-click distance. The last count of Airbnb indicates its use by nearly 500 million guests distributed across 191 countries¹. The emergence of other similar platforms, such as Flipkey and VRBO, reveal a general acceptance of this type of service and interaction. The ease of access to users and the offer of a wide variety of accommodation is now an important factor in the decision to travel or stay in any part of the world. The new technologies associated with tourism are a way of evaluating tourism business models and also to create competitive and alternative forms of accommodation (Munkøe, 2017). This business model, and competitive accommodation, are increasingly segmented and influenced by changes at consumer level, especially in

¹ <https://press.airbnb.com/pt/fast-facts/> (accessed 26 May 2019).

the last decade (Turismo de Portugal, 2007). A few years since its emergence, these new forms of rentals have caused a profound economic, social and urban impact in many cities. On the other hand, they created the opportunity for individual owners to obtain a steady income (either complementary to the family economy or by job creation), to increase cities' tourist capacity, and to encourage urban rehabilitation in city centres (R. Lopes, 2018). In Portugal, the tourism sector contributed favourable to economic growth, helping to overcome a period of crisis. On the other hand, negative externalities are strongly contested in major cities: "unfair" competition for the hotel industry, disturbance of the tranquillity and security of multi-family dwellings, and housing price-increases. Airbnb's "sharing" principle faces increasing criticism, given the fact that its offer contains a large share of entire apartments where the host is not present, and the professionalization of services is similar to hotels.

The rise of housing sales prices in Portugal between 2015 and 2017 is one of the highest in Europe, estimated at 20% (INE, 2017). The emergence of short-term rentals is aggravated by the relative ease in obtaining credit and to the incentives to foreign investments. The average value of the new loans is approaching 100,000 euros, the highest amount since January 2009 as in the period before the beginning of the last crisis (INE, 2017). Therefore, long-term rentals (historically not popular in Portugal) suffer a chronic shortage of supply and disproportionate rise in prices. After decades of rent freezing, there was an owner-favourable amendment to the Rental Law. The cease of old long-term rental contracts is now succeeding, and apartments are being made available for much higher prices or turned into short-term rental accommodation.

High prices of real estate in cities centres is not a new issue. The problem of the gradual voiding of housing in favour of commercial activities and services was recognized decades ago (Mendes, 2014). Nevertheless, the phenomenon of the short-term rental now exerts influence more widely, and, above all, the speed of change in city real-estate dynamics has no precedent.

All over the world, government and public administration bodies face a dilemma: how to regulate short-term rentals so that they can minimize negative externalities without losing their positive effect on the economy. State intervention and new restrictions on renting entire apartments is part of the current social and political agenda in most European countries (Dudás et al., 2017; Gurran, 2017). However, these first attempts to impose restrictions demonstrate that drawing-up regulations is not enough. Given the magnitude of interests and profits in perspective, owners often choose to ignore rules. In this matter we recall Bowles' estimate that "*20 per centre of the regulated population will automatically comply with any regulation, 5% will attempt not to fulfil it, and the remaining 75 percent will fulfil it as long as they think the 5% will be caught and punished*" (Bowles, 1971 in Zaelke, Kaniaru, & Kružiková, 2005, p. 24). Therefore, monitoring and enforcement are key issues in the process of ruling.

Depending on the type of rule, monitoring of short-term rental activity may require economic and (specialized) human resources. The existing traditional planning enforcement teams from local authorities are likely to need adjustment, to be able to respond to the high number of lodgings to inspect, assure in-time response to neighbours' complaints, to do digital monitoring of ads and/or eventually to serve numbers of enforcement notices. In countries with traditionally low levels of compliance and reduced enforcement results (such as Portugal), reducing the *enforcement effort* from public entities seems the 'smart' thing to do. In this paper, we argue that the enforcement effort depends greatly on the design of short-term rental rules. Implications are relevant: How often are on-sight visits required, and how many enforcement officers are needed to cover them? Does enforcement proof depend on easy-to-reach information or on circumstances (i.e. the presence of the owner during while guests are staying)?

Enforcement has always been the orphan in planning, being considered the weakest link of the planning system (Dobry, 1975 in McKay & Ellis, 2005), however short-term rentals impact and the urge to put in place effective regulation brings a new relevance to the topic. This paper discusses the relationship between the type of rules designed for short-term rentals, and the enforcement effort required from

public entities. The methodology relies on a brief analysis of the rules implemented in different European cities through available literature, and a detailed assessment on the evolution on the Portuguese case, evaluating the expectations on the level of compliance with short-term planning rules. To access enforcement effort, we propose a systematization of the type of rules designed in the main European.

1. Planning compliance in Mediterranean countries

In southern European countries illegal development is a still a wide-spread phenomenon. Previous studies estimate that more than 282,000 entire new buildings were illegally constructed in Portugal between 1991 and 2011 (Calor, 2017), 300.000 in Andalusia (Ruiz Olmo, 2015) and 1 million in Greece (Potsiou, 2015). Italy, Turkey and other Balkan countries have approximate levels of compliance (Falco, 2017; Ozer, Vardar, & Naz, 2007; Unsal, 2009; Zanfi, 2013). Building extensions, balcony enclosures, swimming pools, changes of use and other minor works are also frequently undertaken without permits.

Changes of use and subdivision of apartments are likely to be the kind of development promoted by short-term rentals. These are the most difficult to monitor and enforce. Detecting an entire illegal building is fairly simple and evidence easy to collect (i.e. aerial imagery or on-site pictures). Extensions, swimming pools and other physical elements may be more difficult, but once detected, evidence is on the ground. However, changes of use and apartments subdivisions are hidden from external sight and monitoring may require more sophisticated methods. Regarding the difficulties in enforcing changes of use, we recall of a story of a dubious Greek hotel whose owner claimed that the persons in the building were his cousins and friends whom he often entertained in his big house... He may well be successful in claiming 'absence of evidence' in a Mediterranean country court.

For several reasons Portuguese municipalities tend to be condescending on illegal development (Calor & Alterman, 2017). Studies show that municipal officers and politicians avoid detecting, serving notices and taking action in court in most circumstances. Enforcement may be initiated but, for political, social and economic reasons, is rarely taken to the limit (Leite, 2010; D. Lopes, 2004).

The same (or greater) difficulties apply to identifying primary housing, holiday housing and tourist accommodation. Today it is not rare that a single building fits all-in-one types of housing. Enforcement actions to distinguish primary housing (for relocation of residents) from holiday housing (for demolition) in squatter settlements in Ria Formosa (Algarve, Portugal) involved several officers for months, and required regular visits to hundreds of houses (Calor & Magarotto, 2018).

Additionally, the high profitability of this sector encourages imaginative solutions. The plurality of hosts and the possibility of money increases a tendency to circumvent established rules. Some amusing "informal" rental accommodation examples can be found online. Among our favourites are a garage-bar with the bathroom in the "closest bush" in Prague, Czech Republic in 2015², or a caravan parked in the centre of New York with WC at the nearby gymnasium, at additional cost at 2018³. Notwithstanding these obvious cases, mostly one cannot identify the legality of advertised accommodation.

Summing up, the level of compliance with planning rules in southern European countries is probably mid-way between developing countries (often referred as the Global South) and northern European countries (Calor & Alterman, 2017). In southern European countries illegal works are common, owners are audacious, and the administration is incapable (and unmotivated) in dealing with the high number of breaches of planning control. On the other hand, neighbours' complaints are not frequent, or socially

² <https://www.airbnb.pt/rooms/10457093> (accessed June 26, 2015).

³ <https://www.airbnb.pt/rooms/25374851> (accessed October 6, 2018).

accepted. In this context, how reasonable is it to expect that owners and promoters comply with short-term accommodation rules? Will authorities be more willing and capable of enforcing them than planning laws?

2. An overview of short-term rules and enforcement strategies

Restrictions have been enforced in several countries and cities with a high number of short-term accommodation. Strategies vary and the speed of the change of rules change is high. Rules are increasingly complex and de updated is difficult. However, this is probably the most interesting contemporary case of boundary shifting between formal and informal.

In London, a limit of 90 days' rental is applied to individual owners, except if they obtain a specific planning permit for a vacation home (Ferreri & Sanyal, 2018). In San Francisco (USA) the limit is 30 days (Gregory & Halff, 2017; Martin, 2016). In Berlin, entire houses must be registered and taxed as vacation homes. Renting rooms is accepted, with the condition that the host be present. In Barcelona, the number of entire apartments is restricted by areas, through specific zoning (Segú, 2018). In a more extreme attitude, New York has recently updated its laws to ban the advertising of short-term rentals (Dudás et al., 2017; Gurran, 2017).

The difference between entire apartment- and room-rentals (in the presence of the host) requires intensive monitoring. Even when officers are successful in entering the apartment, what evidences can prove the host presence? Personal objects or pictures? In northern European countries, telling-on-the-neighbours might help but these circumstantial evidences are not easy to be considered valid in southern European courts.

The strategies of cities to monitor and ensure rules compliance depend on the type of rules. London (and other cities) established an agreement with Airbnb to ensure automatic blocking beyond 90 days but doubt arises if the owners will comply or simply use other platforms (Ferreri & Sanyal, 2018). Several French cities also have a 120 day time-limit for renting an entire primary housing but no limit applies to room rentals (Heo, Blal, & Choi, 2019). To overcome the problem of differentiating the type of housing, since June 2018 French hosts need to categorize their listings within those three categories: primary residence, secondary residence and non-residential space⁴. Another national law comes into effect in January 2020 forces online platforms to automatic report host income and to transmit user data to the French tax authorities on a yearly basis, including gross income and number of transactions.

In 2016, the city of Barcelona fined the platform at 600,000 euros for advertising unlicensed accommodation. But the practice resumed. The number of enforcement officers needed to find illegal lodgings rental spaces in Barcelona has been greatly increased, as well as the amount of the fines (Segú, 2018). In New York, despite the ban, thousands of entire-apartment advertisements continue to be publicized (Dudás et al., 2017).

Airbnb policy on not revealing consumers or transaction data has led to the emergence of companies dedicated to the extraction of data from the platforms, such as the non-commercial "Inside Airbnb"⁵ and the commercial "Airdna"⁶. The latter provides statistical and geo-referenced information about the properties advertised on Airbnb in major cities, using sophisticated artificial intelligence methods to distinguish the occupancy dates of those blocked by the hosts. There are also new "start-ups" dedicated to gathering information about unlicensed accommodation, for sale to neighbours or to the public administration (Gurran & Phibbs, 2017). These new start-ups create an important balance in this era of

⁴ <https://www.airbnb.pt/help/article/1383/responsible-hosting-in-france#regulations> (accessed May, 30, 2019)

⁵ <http://insideairbnb.com/> (accessed October 1 May 30, 2018).

⁶ <https://www.airdna.co/> (accessed October 1, 2018).

a shared economy, where enforcement relies in digital tools as much as in physical sight visits (Harris, 2015).

3. Portuguese national strategies and tax regulation

Until recently, short-term rental was an activity free of obligations and restrictions. Despite tourist rentals were common in coastal areas during summer, authorities had always turned a blind-eye to this economic segment. In 2008⁷, the first law short-term rentals was included in a general tourism legal framework where the minimum conditions for lodgings were established. It defined short-term rental or “local accommodation” (“alojamento local”) as an establishment “*that provides temporary accommodation to tourists, in exchange for a remuneration*” and that do not “*meet the requirements to be considered tourist ventures*”. In 2014⁸ specific law entitled Legal Framework for the Exploration of Short-term Rentals was enacted and the activity was further regulated, introducing the obligation for apartments, rooms and hostels to register. The online registration application requires (i) personal information about the person responsible, (ii) a national tax office declaration (“activity initiation” to ensure that owners would be able to issue invoices), and (iii) the housing occupancy permit number (issued by municipalities after building completion). Different to other countries, “tourist apartments” permits are not granted for individual apartments or houses (may only have that designation when integrated in a tourism complex, i.e. hotel or apart-hotel). As such, any conventional house or apartment is eligible for short-term rental. After online registration has been submitted, the owner can start advertising and renting immediately. A municipal inspection would be scheduled within a month and, if it is positive, an administrative fee is due and the process concluded.

Therefore, we can note that the registration process aims on the one hand to prevent tax evasion, and, on the other, to ensure that tourist accommodation complies with minimum housing standards. At the municipal level, the first measures were pecuniary. Since January 2016 the municipality of Lisbon charges a tourist fee (two euros per day per guest). Mafra and Porto followed. Similar to other European cities, an agreement between Airbnb and the municipalities of Lisbon and Porto guarantees the direct collection of the tourist tax. Owners are responsible for paying the fees directly to municipalities when rentals are directly booked or advertised on other platforms.

Despite being competing economic activities, recent academic studies show that the impact of short-term rental in the hotel sector has been moderate, keeping the profit levels of most hotels but bringing difficulties to establishments in the low-range economical segment (AHRESP, 2016). In the main Portuguese cities, Lisbon, Porto, Braga and Coimbra, the rise in prices is significant. Gentrification is an evident phenomenon, displacing not only poor populations but also medium income ones to beyond the city centre. In academic literature the impact of short-term rentals in house-price increases is undervalued. The causes of price increases are thought to be a combination of additional factors such as low interest rates and incentives to foreign investment (R. Lopes, 2018). The proposals of the parliamentary groups have succeeded, and discussion on how to deal with high house-prices is on the political agenda. A new set of laws aiming to deliver affordable rental housing is close to being approved, and it is expected that relief from taxes on long-term rentals and other programs for increasing the housing rental stock will be debated.

An intense political debate on the policy to adopt towards short-term rental culminated with an amendment the Legal Framework for the Exploration of Short-term Rentals⁹. In force since October 2018, the changes focus on providing larger guarantees to condominiums members (they can now

⁷ Decree-Law 39/2008 from March 7.

⁸ Decree-Law 128/2014 from August 29 approved the Legal Framework for the Exploration of Short-term Rentals.

⁹ Decree-Law 62/2018 from August 22.

oppose to registers) and grant municipalities wider powers to establish zoning, restrictions on the number of local lodgings and cancellation of registrations. This law thus enables municipalities to design an urban strategy.

Today, obligations for owners can be summarized in the following list:

- **National tourism office:** register the lodgings (obliges to comply with housing standards and fire regulation and to have a complaints book).
- **National tax service:** issue an invoice within five days of the guests' payment reception, pay annual income tax and tax on capital gains (upon selling).
- **Foreigners and Border Service:** submit international guests' data within three days of arrival.
- **Social security:** monthly contribution or a trimestral declaration with total income.
- **Municipalities:** pay inspection fee (upon registration). In Lisbon, Porto and Mafra a trimestral declaration is required, with number of stays and correspondent payment of the tourist fee.

All these obligations may be fulfilled on separated internet platforms.

With a reduced tradition of monitoring and enforcement, expectations of compliance in Portuguese owners is low. A simple search on Airbnb reveals the existence of several advertisements without a registration number, or in places where it cannot be obtained such as informal settlements in public maritime areas (Calor & Magarotto, 2018). Additionally, a study by AHRESP (2016) found that the number of accommodation units officially registered in September 2016 was much lower than those advertised on Airbnb. In the capital, the difference is almost 3,500 properties, corresponding to 37.4% of those advertised on Airbnb. The parishes of Santa Maria Maior and Misericórdia (in Lisbon) and the centre in Oporto City show the greatest incongruence in the numbers - in the central parishes in Oporto it is estimated at more than 50%.

Recently, the municipality of Oporto reported that revenues from the tourist fee surpassed expectations by 50% (Lusa, 2018). As the fee is directly charged by the Airbnb platform, this difference may well relate to the difference between the number of registered accommodation units and those actually made available for rental.

Under these conditions, what are the expectations of the Portuguese Administration that it can effectively implement restrictive zoning rules for short-term rentals? Is it prepared to monitor, enforce and deal with social and political deviations from the rules? More importantly, what lessons can it learn from the experience of other cities?

4. Municipal strategies

After the 2018 law amendment, a few municipalities immediately took the opportunity to “freeze” new registrations in specific areas. In November 2018, the Lisbon municipal assembly decided to prevent further registrations in certain central areas, and the Mafra municipality did the same for the “Urban Rehabilitation area of Ericeira”¹⁰.

Very recently, in May 2019, a new municipal regulation was passed from the Lisbon municipality which “establishes rules to apply to the new registries of short-term rentals in areas delimited as containment areas”. The zoning defines two categories: “**absolute containment**” in areas that the ratio between registered lodgings and primary housing is calculated above 20% and “**relative containment**” for a 10-20% ratio. New registers will not be granted for areas of “absolute containment”, with one exception

¹⁰ <http://www.cm-mafra.pt/pt/municipio/alojamento-local> (accessed May, 30, 2019)

for entire buildings renovation if the building was previously in ruins and unoccupied for longer than three years. In “relative containment areas” the exceptions are broader: when an entire building or an independent unit is unoccupied for three years and has suffered profound rehabilitation works or when there was a change of use approved from industries, logistic or services to housing units in the last two years. Nevertheless, no registrations are allowed if there was an official rental contract in the last five years (even if the previous conditions are met)¹¹. It is worth noting that the enforcement section of Lisbon municipal regulation mentions that it “*can be asked to collaborate with administrative and police forces and protocols can be hold with associative and public interest entities, or contracts with private entities to undertake specific actions, namely inquire into existing establishments and their conditions*”.

No other zoning-based policy is yet known for other municipalities. Porto has announced a draft of municipal regulation for June 2019 (Lusa, 2019) but so far no restrictions to the number of short-term rental registrations have been put in place.

5. How ‘smart’ can short-term rules be?

The assertion that “*enforcement is the weakest link in the planning system*” (Dobry, 1975 in McKay & Ellis, 2005) remains actual and is pertinent. As stated above, planning enforcement in southern European countries faces strong opposition and lack of efficiency. Those countries where enforcement is particularly challenging should think “smart”, meaning, to have especial attention on the design of rules for short-term rentals by anticipating their implications on the resources for monitoring and enforcement. In a simple exercise, we suggest a systematization of the type of rules implemented in a few European cities and comment on the enforcement effort they require.

- **Time-limited rules.** May be monitored in several ways, but agreements with web platform companies, as in London, make it simple. However, owners may use different platforms to manipulate the restrictions, so digital monitoring is still necessary. Site visits seem necessary only after owners have exceeded the time-limit.
- **Accommodation-type rules.** Rules that differentiate rooms from entire apartments, as in Berlin and Paris. To verify the presence or absence of the owner, regular visits to the lodgings are necessary and, because it relies on circumstances, enforcement may be delicate. Monitoring may rely on neighbours’ claims, so incentives and open-lines for citizens to communicate with administration seems a key-tool.
- **Zoning rules.** Rules may be more restrictive in specific areas of the city. Barcelona, Lisbon and many other cities are applying different rules according to different zones. As locations at Airbnb may not be accurate, digital monitoring and sight-visits might be necessary to make a match between building pictures and platform information.
- **Registration rules.** Requiring a register makes monitoring and enforcement much easier, as responsible-person contacts are available. Implemented in Portugal and Berlin, it allows data crossing with other public bodies and practicable to serve enforcement notices if subsidiary rules are not followed. If a registration number is mandatory on the advertisement, digital monitoring becomes easier - despite still being necessary to check the correspondence between the added details and the registration data (fake numbers may be used). It also makes it easier to establish maximum quotas for the number of lodgings allowed.
- **Banning rules.** Some cities do not allow short-term rentals at all, such as New York. Banning entire apartment rentals in specific areas is implemented in Berlin. These kind of rules are easy to monitor but not easy to enforce due to the general trend of acceptance of this type of rental.

¹¹ <http://www.cm-lisboa.pt/viver/urbanismo/alojamento-local> (accessed May, 30, 2019)

National policies and local governments have opted for a combinations of rules (for some European cities see Table 1). In Paris, where the number of existing accommodation units in Airbnb is the highest, all types of rules except banning are in place. Despite its necessity, this wide strategy demands a considerable number of specialized human resources for the different tasks involved, such as digital monitoring, sight-visits and enforcement-notice serving.

Table 1: Short-term rental type of rules in European cities.

Short-term rentals type of rules					
	time-limited rules	accommodation-type rules	zoning rules	registration rules	banning rules
Lisbon (PT)			X	X	
Berlin (DE)		X	X		X
Barcelona (ES)			X	X	
Paris (FR)	X	X	X	X	
London (UK)	X	X	X		

The difference between entire apartment and room rentals (in the presence of the host) requires intensive on-sight monitoring. Even when officers are successful in entering the apartment, the owner might not be there. What evidence is accepted for the owner’s presence? Having personal objects or pictures would be enough? This sort of rule seem difficult to enforce, at least in southern European countries’ social context.

In general, the type of rules that depends more on digital tools than site-visits demand less resources. Even if specialized human resources are needed for this task, it allows them to cover a wide number of situations in a shorter time. Plus, evidence is easy to collect. We also consider especially positive the implementation of registration rules, as it guarantees an access to owners (which is very important in countries where cadastre and property rights are not always accessible to local administration).

5. Conclusion

The rapid evolution of the short-term rentals business has caused a paradigm shift in major European cities. The growth of the economic sector has been accompanied by attempts to regulate the activity, and different types of rules have been adopted. The number of obligations for owners are summed up and their complexity is increasing. Consequently, the probability for voluntary or involuntary incompliance is high.

In countries where enforcement is particularly challenging, regulation should anticipate the implications of enforcement effort on public administration. If rules require non-existent resources or actions that are difficult to put in practice, they are likely to fail. To better access the enforcement effort we suggest a systematization of the type of rules implemented in a few European cities: (i) time-limited rules; (ii) accommodation-type rules; (iii) zoning rules; (iv) registration rules; and (v) banning rules.

From this exercise it is perceivable that monitoring and enforcement of short term rental rules is not a ‘mission impossible’ but it is certainly a demanding one. Digital monitoring is relatively new for authorities and may require skills that are more sophisticated. Airbnb have accepted collaborating with administrations on time-limited type of rule, but it has been resistant to help monitoring other types of rules (despite the costs of court cases). The yet-to-be-implemented French law on automatic reporting of host income and transmitting user data to the tax authorities seems a step forward in the relations

between public administration and online platforms. If successful, most probably other countries will follow.

In comparison to most European countries, Portuguese regulation is still “soft”. From the above mentioned, only registration rules are in place for the entire country and zoning rules apply for Lisbon and Mafra only. Nevertheless, based on the experience on planning enforcement, there are good reasons to believe that municipalities will not be motivated to deal with monitoring and enforcement tasks. Besides the lack of enforcement resources, there is also an economic interest behind low levels of monitoring in cities where a tourist tax is charged directly by online platforms. As Porto municipality remark shows, municipalities will probably have little interest in “chasing” unregistered lodgings as they profit from them. On the other hand, the national administration has an objective interest in reducing tax evasion, so it is more likely that they probably more active in enforcement.

Finally we underline that improving compliance with short-term rules should not be regarded as a formal issue or exclusively an administrative responsibility. It is a matter of order, justice and collective responsibility. For consumers there is also a "social" responsibility behind the verification of the legality of the lodgings to rent, as a conscious and respectful attitude towards the local inhabitants.

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